79-6261

IN THE SUPREME COURT OF THE UNTIED STATES

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~~BAYSHORE ALERT - YES COMMITTEE~~,
JOEL JAFFER, ~~Chairman,~~

~~STATE OF FLORIDA,~~
~~Ex-rel JOEL JAFFER,~~

Appellants,

-vs-

CASE NO. _____

CITY OF MIAMI, etc.;
JAMES G. ROBERTSON;
HOLYWELL, INC.;
LONGVIEW, INC.;

RICHARD P. BRINKER;
RALPH G. ONGIE; etc.;

Appellees.

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STATEMENT ON JURISDICTION

APPEAL from the Supreme Court of Florida
Final Order of Dismissal

Submitted By:

Joel Jaffer, Pro Se
B.A.Y. chairman
2479 SW 13 St.
Miami, Fla. 33145
Tel. (305) 643-1764

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79-6261

Motion to Proceed in Forma Pauperis

Appellants move to proceed in forma paperis pursuant to Rule 53:

1. The appellants are unable to pay the filing fee and other costs of this action or to give security therefor. Joel Jaffer is unemployed, owns no land or assets which to utilize.

2. Appellants bring this appeal in good faith, have presented the questions presented thereby, and believe appellants are entitled to redress in this court.

3. Appellants hereby affirm that all facts averred in their statement on jurisdiction are ture and correct.

I, Joel Jaffer, do hereby affirm to and verify the foregoing as true attestation of same, and do hereby execute this affidavit in testimony thereof, this 1st day of February, 1980.

Signed, Joel Jaffer

Motion to Sever Service

Appellants hereby move to sever all appellees from service of responsive pleadings, etc., inclusive, except the Miami City Attorney, Florida Attorney General, Jack R. Rice, Jr., Paul A. Buck, Esqs.; and Mr. Sus Ifthidicus, upon application; on the grounds that other attorneys have not filed pleadings heretofore, and have no interest in the outcome hereof, save Alan H. Bruckner; and that appellant cannot afford duplicitidicus correspondence.

Motion to Extend Time for Filing Appendix

Appellants' appendix is near 200 pages, they cannot at present afford the same to be reproduced. Appellants wish leave of court for time to prepare the appendix, or, for leave of court to send originals for the court to reproduce.

Signed, Joel Jaffer, Pro Se

Nature of the Proceedings Below

Appeals of and challenges to Florida's insolvency provisions for court costs and filing fees were dismissed from the Florida Supreme Court for failure to pay its filing fees.

Judgements

The final judgement of dismissal was entered on January 3rd, 1980, "subject to reinstatement should the filing fee be received in this office before January 11, 1980" .

A motion for rehearing and/or clarification was mailed January 15, 1980, received January 17, 1980, and returned unfiled on January 18, 1980, because, "Petition for reinstatement (or rehearing) would only be accepted if the filing fee was recieved (sic) in this Court by January 11, 1980. "

Notice of appeal was mailed to the Florida Supreme Court via U.S. Post Office registered mail on January 31, 1980.

Statute conferring Jurisdiction

Jurisdiction is vested in this court under and by reason of Title 28, United States Code, sections 1257 and 2104, and Art.III, s.2, Art. IV,s.2, Art. VI, and Amendments V and XIV of and to the United States Constitution.

Cases Sustaining Jurisdiction

Violations of State due process requirements are repugnant to the Federal Constitution as well. Central Savings Bank v. New York, 18 N.E.2d 151, Hallinger v. Davis, 146 U.S. 314.

The U.S. Supreme Court will investigate and protect persons under the 14th amendment, Payne v. Arkansas, 356 U.S. 560, when justicealbe controversies arise thereover, Baker V. Carr, 369 U.S. 186.

Due process essentially means that persons whose rights must be determined by a judicial tribunal be given adequate opportunity to be heard. Boddie v. Connecticut, 401 U.S. 371 . Due process demands a hearing before dismissal. Trustees of Dartmouth v. Woodward, 17 U.S. 518.

Due process will enforce the fundamental principles of justice, Holden v. Hardy, 169 U.S. 366, and the administration thereof, Dent v. West Virginia, 129 U.S. 114. The main purpose of due process is to delimit powers of state, Re Gault, 387 U.S. 1. It affords persons at least their protection under the English Crown, Ingraham v. Wright, 430 U.S. 651.

A valid law may be unconstitutionally applied when it interferes with an exercise of rights. Boddie, supra, such as litigation, albeit vigorous, NAACP v. Button, 371 U.S. 415.

Likewise, classifications which invade fundamental rights being asserted under equal protection clase will be closely scrutinized. Harper v. Va.Bd. of Elections, 383 U.S. 663.

Appeal is necessary to the exercise of any fundamental right. Chambers v. Florida, 309 U.S.227, Gideon v. Wainwright, 372 U.S 335.

Constitutional test of statute is a fundamental right. Cohens v. Va., 6 Wheat. 264, 378

Statute in Question

Chapter 57,081, Florida Statutes. Page 234-5, 1977 Florida statutes

"57.081 Costs; right to proceed where prepayment of COSts waived. -

(1) Insolvent and poverty-stricken persons having actionable claims or demands shall receive the services of the courts, sheriffs, and clerks of the county in which they reside without charge. No prepayment of costs to any judge, clerk, or sheriff in the county is required in any action when the party has obtained a certification of insolvency from the clerk in each action, based on affidavits filed with him that the applicant is insolvent and unable to apy the charges otherwise payable by law to any of such officers. The affidavits shall be supported by a written certificate signed by a member of the bar of the county that he has made an investigation to ascertain the truth of applicant's affidavit and that he believes it to be true; that he has investigated the nature of plaintiff's claim and that in his opinion it is meritorious as a matter of law; and that he has not been paid or promised payment of any remuneration for his service and intends to act as attorney for applicant without compensation. On the failure or refusal of the clerk to issue a certificate of insolvency, applicant is entitled to a review of his application for the certificate by the court having jurisdiction of the cause of action.

(2) Any sheriff who, in complying with the terms of this section, expends his personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under this section may requisition the board of county commissioners of thecounty for the actual expense, and on the submission to the board of county commissioners of appropriate proff of any such expenditure, the board of county commissioners shall pay the amount of the actaul expense from the general fund of the county to the requisitioning officer.

(3) If Plaintiff recovers in the action, costs shall be taxed in his favor as provided by law and when collected, shall be applied to pay costs which otherwise would have been required and which have not been paid.

Rule 9.430, Florida Rules of Appellate Procedure, March 1,1978,p.30.

RULE 9.430. Proceddings by Indigents.

A party who has the right to seek review without prepayment of costs shall file a motion in the lower tribunal, with an affidavit showing his inability to pay fees and costs or to give security therefor. If the motion is granted, the party may proceed without further application to the court and without prepayment of fees or costs in either the lower tribunal or the court or the giving of security therefor. If the motion is denied, the lower tribunal shall state in writing the reasons therefor. Review shall be by motion filed in the court.

Questions Presented

Does Ch, 57.081, Florida Statutes invidiously discriminate against insolvent persons unwilling or unable to secure free legal assistance by requiring a certificate of counsel that such person is in fact insolvent, has a meritorious claim, and will receive legal service free of charge in order to file a civil lawsuit or otherwise receive service of the court by law

Does Ch. 57.081 on its face deny insolvent persons of their fundamental rights by requiring them to appeal a clerk's decision adverse to their insolvency to the court of jurisdiction overtheir claim, when said review requires filing fees, without due process of law?

When Appellants were dismissed from courtbelow because they had not paid a filing fee, and were denied leave to seek review without prepayment of costs in the court below, and appealed both of those orders to the State Supreme Court on grounds of un-constitutional violations of access to the courts, due process, and equal protection, did the State Supreme Court violate,and otherwise misapply its rules in a way repugnant to, those same Constitutional guarantees by dismissing the appeals for lack of payment of the filing fee?

Once established in a court below, did the Florida courts violate Appellants' substantive rights to appeal by dismissing their appeals because of lack of payment of appellate court fees?

When merits of Appellants' appeal concern constitutionality of filing fee and dimissal procedures for indigents in Florida Courts, did the State Supreme Court deny appellants their right to adjudication of constitutional question without due process of law by dismissing their appeals for want of fees, without hearing, briefs or other procedural due process requirements of the appellate process?

Nature of Proceeding Below

The Bayshore Alert : YES (B.A.Y.) Committee, and Joel Jaffer, its chairman and hopeful class representative, had these five causes dismissed from the District Court of Appeals of Florida, Third District, because of their failure to produce the fees normally required for that court ($50) by state law.

They had paid the fee in one case, numbered 57,898 in the Florida Supreme Court, which was the first to be appealed. The case was dismissed on other grounds, however, from the said District Court.

All six cases were then appealed to the Supreme Court of Florida, the court of last resort in that State. Two of the cases (with Appellees Richard P. Brinker, Clerk, Circuit Court, and Holywell, Inc.) were simultaneously appealed to the Supreme Court of Florida directly from that state's circuit courts.

Pursuant to Florida Court rules, Appellants moved for a waiver of costs on appeal to the State Supreme Court in all of the lower courts. The requests, which prayed for relief from a denial of state rights of access to the courts and due process, and Federal rights of equal protection, were denied in four cases and not ruled upon in the other two. Appellants then appealed those four denials to the State Supreme Court as well.

The notices of appeal and Appellants' briefs, and briefs on jurisdiction were, in time, all duly and timely filed in the said Florida Supreme Court. The briefs cited pleadings below and authority to the effect that the appellants' causes should

not have been dismissed below because of their apparent failure to file the fees.(These arguments will appear later.)

The Clerk of the Florida Supreme Court recieved all of the pleadings, but sent Mr. Jaffer notices on all of the receipts that the appeals "would not be considered" until the $75 filing fee for that court was paid to that Clerk.

At this point, all of the Appellees moved to stay the requirement for their answer briefs on jurisdiction, or answer briefs, where applicable, until the filing fees were paid. These motions were granted.

Then, the Appellees moved to dismiss four of the appeals (no relation to the previously mentioned four), on the grounds that the filing fees had not been paid.

The Appellants answered that such a motion went to the merits of the appeals, and to the jurisdiction of the court, and that, thus, /the appeals/ could not be dismissed for this reason. The Court apperently agreed and notified the parties that the motions to dismiss would be considered at the time jurisdiction would be considered.

Appellants now moved to proceed in forma pauperis, citing, inter alia, the contents of their briefs on jurisdiction, and various constitutional guarantees which the insolvency statute provisions and court rules had, under the circumstances, violated.

Finally, the State supreme Court dismissed all of the appeals, subject to reinstatement if the filing fees were paid before January 11,1980, which was not done. A rehearing was refused and returned to Mr. Jaffer.

Rule 9.040(h), Florida Rules of Appellate Procedure, Mar.1,1978,p.10

> Rule 9.040 General Provisions
> (h) Non-Jurisdictional Matters. Failure of a clerk or a party timely to file fees or additional copies of notices or petitions shall not be jurisdictional; provided that such failure may be the subject of appropriate sanction.

How Constitutional Questions were Raised

For further clarification of these issues, we now look at each case on appeal separately. Heretofore they were consolidated for the jurisdictional statement pursuant to Sup.Ct. Rule 15(3).

* Jaffer v. Brinker, Fla.Sup.Ct. Nos. 57,898 and 58,111.

This is perhaps the case where the Constitutional issues are the most blaring. The case was originally filed in the Circuit Court under the insolvency provisions of Ch. 57.081, Florida Statutes, because the Defendant(Respondent) Clerk of the Circuit Court Brinker refused to give Mr. Jaffer an Affidavit of Insolvency even though Mr. Jaffer had presented an affidavit and certificate pursuant to that statute.

The Petition for Writ of Mandammus was dismissed in the Circuit Court August 14,1979. Appeal was taken to both the Florida Supreme Court and District Court of Appeals, Third District as a matter of right. In a motion to transfer the appeal from the District to the Supreme Court, Mr. Jaffer stated:

> "This appeal initially and directly passes upon the validity of Chapter 57.081, Florida Statutes, i.e. that section which prescribes that appeals of the decision of the Clerk shall be made in the jurisdiction in which such certificate is sought/ "

The motion was denied by the District Court October 17,1979.

Mr. Jaffer then moved to waive appeal costs in the

Circuit court-lower tribunal. In doing so he plead:

> " Said statute prescribes that only one such affidavit per case shall be filed, and dispenses with the necessity of duplicate filings for an appeal. * * *
> Because this cause of action involves the propriety of F.S. 57.081 and Rule 9.430, a denial of review of those laws by this court because of said laws is to deny the Petitioner due process, separation of powers, right to appeal, and access to courts guaranteed him by the Florida and U.S. Constitution.
> The relief requested is necessary to the prosecution of this appeal and Petitioner has no other adequate or speedy remedy at law save this motion. "

This motion, made on Sept. 24, 1979 was denied by the Circuit Court October 1,1979 giving no reasons therefor. Mr. Jaffer amended his notices of appeal to include that order of denial.

By now needless to say, the District Court dismissed the appeal on October 30,1979 because the filing fee was not paid. Mr. Jaffer filed notice of appeal of that decision to the Florida Supreme Court on November 11,1979. He moved for consolidation in the latter court with the other cases now before this court, becaus

> "The appeal directly passes upon the validity of F.S.57.081 and also construes Article I,s.21, Florida Constitution, as well as certain provisions in the Federal Constituttion;"

The motion to consolidate was denied October 18,1979, although the high Florida court said that the "cases will travel together for consideration by the Court at the same time". (referring to the appeal from the Circuit Court)

In receiving the new appeal from the District Court, the Florida Supreme Court sent the following notice Nov.20,1979:

> " $75 Filing fee not received. This case will not be considered by the Court until said fee is received or a Notice of Insolvency is filed by the Appellant."

Mr. Jaffer did the latter option, and filed a Motion to Proceed In Forma Pauperis which read in part as follows:

> "That in an action to determine one's insolvency, the said person cannot be expected to pay court costs for

the review of such action mandated in Ch. 57.081,F.S.A. Similarly, the actions of the lower courts here reflect the burdensome nature of court fees in order to secure relief in Florida. The Circuit Court did not rule that the Appellant wasn't entitled to indignet relief, but instead refused to rule. The Appellant was forced to petition the district court for a writ of mandammus to compel the lower court to rule, for which he could not pay the fee, etc., etc. The Circuit Court still refused to rule on the petition by dismissing it. * * *

the Appellant has argued in many briefs on jurisdiction before this court in support of his right to so proceed, specifically Case Nos. 57,800, 57,784; and that said arguments are incorporated herein by reference.

That the common law of England provided for court-sanctioned proceedings in forma pauperis,(as opposed to legislated provisions) and that this court is well within its constitutional mandate and limits to grant such leave. Boddie v. Connecticut, 401U.S. 371.

That denial of this motion would be to deny the Appellant the equal protection of the laws that secure his civil rights of access to the courts for redress of grievances.

That the administrative quagmire produced by this action is not the entire fault of your Appellant; that he has proceeded in good faith by instituting an action once and for all to determine his insolvency; and that statutory and other deficiencies in the Courts of Florida have produced conflicting and circuiticious procedures that should be resolved of right in this Court."

* B.A.Y. v. Holywell, Fla.Sup.Ct. No. 57,944

The other major issue raised by the actions of the Florida Supreme Court is typified by an examination of the pleadings in this case, to wit: Dismissal replacing adjudication on the merits.

The Appellee Holywell moved to dismiss the appeal because the fee had not been paid, and because, supposedly, a motion to proceed in forma pauperis was not the proper way to proceed. On October 31,1979, Appellants answered as follows:

"That his appeal has for its issue the propriety of the dismissal procedures for indigents in the Florida Courts, and that thus the Respondents have plead to the merits of the appeal in order to have it dismissed.

That the respondents are attempting to circumvent movants' access to the courts and rights of appeal by claiming that an appeal of an order which was allegedly frivolous is itself frivolous.

That extensive argument upon these points is contained in Appellants' Brief on Jurisdiction, duly and timely filed and served herein, where of necessity said arguments should reside, and that Respondents should of necessity plead their arguments in an Answer Brief thereto.

That, likewise, argument leaning towards the proposition that Respondents should have filed an answer brief rather than a motion to dismiss is also contained in said Appellants' Brief on Jurisdiction, which said argument is hereby incorporated and adopted herein and hereto by reference. * * *

That thiscourt has a responsibility given it by the Florida Constitution to proceed with this cause until final adjudication on the merits.

That to movants' knowledge, F.S. 57.081 does not apply to the Clerk of the Supreme Court, and that provisions of Ch. 35,F.S.A. which prescribe payment of a filing fee without provisions for indigents (were this court so to rule) are hereby submitted as unconstitutional * * * "

On October 29,1979, the Florida Supreme Court ruled:

"Motion to Dismiss and Motion to Dismiss and Strike Notice to Invoke Certiorari Jurisdiction of the Supreme Court of Florida will be considered at the time the Court determines jurisdiction."

*** Several of the pleadings below involve numerous cases simultaneously.

On October 31,1979, Appellants filed an Answer to Motions to Dismiss, and also a motion for rehearing of the Supreme Court' Order granting a stay of filing of answer briefs on jurisdiction until after the fee was paid. It said, inter alia,

" * * * they are trying to try the issues of the Court's jurisdiction without the benefit of a proper trial, they have acted contrary to the expressed intent and stipulations of their Motion to Stay, and are attempting to avoid proper consideration of this appeal. "

In a pleading in support of their Motion to Proceed in forma pauperis, Appellants plead:

"Appeal in an d of itself is a protected right against invidious discrimination based on wealth. Dowd v. U.S., 340 U.S. 206, Griffin v. Illinois, 351 U.S. 12, Boddie, supra."

Substantial questions

These cases involve the fundamental rights of the Appellants which invoke due process requirements. Although only the case against Richard P. Brinker directly contests the insolvency statute, the other cases encountered similar impediments in the process of appeal and error through the Florida Courts.

The Lanyview, Inc. and City of Miami-Robertson cases were actions to review certain zoning decisions of the City of Miami. That City's zoning code prescribes that appeal of such actions may be had only through the state circuit courts. Homeowner actions involve fundamental property rights within the meaning of the fourteenth amendment, to the extent that they may be maintained as class actions. Mags Transportation System, Inc. v. City of Miami Beach, 1956, 88 So.2d 751.

Moreover, the actions had as their root cause certain determinations of dedications of rights-of-way within private subdivisions, which were claims inherent to the courts in their authority over titles to lands within their jurisdiction. Grannis v. Ordean, 234 U.S. 374.

The Robertson (solo) action was a common-law action for conversion, said common-law being adopted to Florida Law prior to the State's constitutional guarantees of access to the courts, Kluger v. White, 281 So.2d 1, and being determinative of that latter right.

The Hollywell case started as an appeal of right pursuant to State zoning law, similar to that aforesaid,

but evolved into a constitutional test of a new development statute as being violative of the Florida Separation of Powers doctrine.

Finally, the Gayle case was one to protect the rights of a hopeful candidate to get on the ballot, such rights long ago equated to sovereign rights of the people and realized as fundamental by this court. Baker v. Carr, 369 U.S. 186, Jackson v. Ogilvie, 325 F.Supp. 864.

In general, access to the courts is a fundamental right within the scope of the due process provision. Boddie, (concurring opinion of J. Douglas), supra, DeWitt v. Paul, 366 F.2d 632

Appeal of cases involving fundamental rights is most definitely within the clause. Chambers v. Florida, 309 U.S. 227, Burns v. Ohio, 360 U.S. 252.

When thus called upon in the aid of life, liberty and property, we can see that Ch. 57.081 on its face, and as applied with other Court rules, not only deprive insolvent persons of a hearing and/a day in court, but invidiously do so because of wealth alone.

On examination of the statute, it appears that Appellants were lucky to get in court at all. If the Clerk denies a certificate of insolvency, how can a party get review in any court? And this is not taking into account the discriminations against persons who cannot secure free legal services.

And, as here applied the statutes totally deny Appellants' resort to the courts, by dismissing their appeal of a dismissal because of a lack of court fees, a non-jurisdiction defect. Davis v. Setzer's Super Stores, 145 So.2d 893.

The question is substantial. Griffin v. Washington, 372 U.S. 137

> "Access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." */

In the State of Florida, Rules of Court supersede an inconsistent statute of this type. Jaworski v. Opa-Locka, 149 So.2d 33, 500. Rules of court cannot enlarge or restrict substantive law, Ex Parte Collett, 337 U.S. 55, 69 S.Ct. 944, 93 L.Ed. 1207; Sibbach v. Wilson & Co., 312 U.S. 1, 61 S.Ct. 422, 85 L.Ed. 479; Ex Parte Peterson, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919; Ex Parte Rule, 5 Wall. 290, 18 L.Ed. 520; Ex Parte Wells, 18 How. 307, 15 L.Ed. 421; Ex Parte Fisk, 113 U.S. 713, 5 S.Ct. 724, 28 L.Ed. 1117; Ex Parte Boyd, 105 U.S. 647, 26 L.Ed. 1200; Ex Parte Robinson, 19 Wall. 505, 22 L.Ed. 205; Ex Parte McCardle, 7 Wall. 506, 19 L.Ed. 264; Ex Parte Yerger, 8 Wall. 85, 19 L.Ed. 332; Wayman v. Southard, 10 Wheat. 1, 6 L.Ed. 253; Supreme Court Rules, 28 U.S.C.A. **/

Most importantly, what the State Supreme Court has here done is to deny appellants a forum and final determination of a justiceable Constitutional controversy. But that is really the only thing that the state supreme court is in existence to do. Cohens v. Virginia, 6 Wheat.(19 U.S.) 264, 373, 5 L.Ed. 257. ***/

Conclusion

The Supreme Court of the United States should take jurisdiction over this justiceable and important Constitutional controversy.

Submitted,

Joel Jaffer, Pro Se
2470 SW 16 St.
Miami, Fla. 33145
Tel. (305) 643-1764

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing statement on jurisdiction was served by U.S. Postal Service, first class postage prepaid, upon Jerry Thornton, Jr., Miami City Attorney, Hon. Jim Smith, Fla. Attorney General, Jack R. Rice, Jr., Esq., and Paul C. Huck, Esq. on this 15th day of February, 1970.

By: Joel Jaffer

*/ Art. I, s.21, Fla. Const.
**/ Art. V, s. 3, Fla. Const.
***/ Art. V,s.(4)(2) Fla. Const.

IN THE SUPREME COURT OF THE UNTIED STATES

JOEL JAFFER,
STATE OF FLORIDA,
Etc.,Etal (Ex-Rel),

Appellants,

-vs-

CITY OF MIAMI,Etc.,
RALPH G. ONGIE,Etc.,
JAMES G. ROBERTSON,
LONGVIEW,INC.,Etc.,
HOLYWELL, INC.,Etc.,
RICHARD P. BRINKER,Etc.,

Appellees.

CASE NO. 79-6261

Florida Supreme Court
Case Nos. 57,784
57,785
57,798
57,799
57,801
57,836
57,888
57,898
57,944
58,111

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SUPREME COURT, U.S.

MOTION TO PROCEED IN FORMA PAUPERIS

Pursuant to Ruel 53 U.S.Supreme Court Rules and Title 28, U.S.C. 1915, Petitioner-Appellant hereby moves to Proceed In Forma Pauperis, and does hereby affirm the following:

1.. The Appellant, Joel Jaffer, in unable to pay filing fees and other costs of this action or to give security therefor. He is unemployed and owns no land or other valuable assets.

2. The Appellant brings this appeal in good faith, has presented viable questions he seeks to review, and believes he is entitled to redress by appeal in this court.

3. The Appellant acknowledges that he is the Board of Directors of the B.A.Y. Committee and that the facts alleged in a "Motion to Represent Class" are affirmed herein as true and correct for the purposes of that motion.

To the above, Joel Jaffer does hereby affirm and verify the foregoing facts as true and correct t o the best of his knowledge and belief and does execute this affidavit under penalty of perjury in testimony thereof pursuant to the laws of the United States,this 11th day of March, 1980 A.D.

Signed, _____
Joel Jaffer

IN THE SUPREME COURT OF THE UNITED STATES

79-6261

CASE NO. _____

Florida Supreme Court
Case Nos. 57,784 57,898
57,785 57,944
57,798 58,111
57,799
57,801
57,836
57,888

JOEL JAFFER, Chmn., B.A.Y. COMMITTEE, etc., et al.,

Appellants,

-versus-

CITY OF MIAMI, etc., et al.,

Appellees,

RECEIVED
MAR 5 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION TO REPRESENT CLASS

COMES NOW Joel Jaffer, Pro Se, Appellant , and moves to represent the class of the Bayshore Alert: Yes committee, an unincorporated association, pursuant to Rule 23.2, Fed.R.Civil.P., and states:

1. That the Bayshore Alert: Yes (B.A.Y.) Committee is an unincorporated association, whose articles and membership are attached hereto as exhibit ".".

2. That the members of the said B.A.Y. committee are too numerous to make a joinder of parties practicable, and that Joel Jaffer can fairly and adequately represent the interests of the B.A.Y. Committee in this cause before this court.

3. That the said members formed and joined in the B.A.Y. Committee to promote and defend a common interest, by association to a greater extent than by themselves individually, and that the claims here appealed are common to the very maintenance of the association's actions below; and that the association is unsolvent and without funds or ability to pay this Court's costs.

4. That the B.A.Y. Committee as a class was dismissed en toto from the Florida Supreme Court, and that the issues here raised are the Committee's right to have their insolvency determined and/or to proceed regardless of the results of or the determination; and, thus, separate or varied adjudication of members of the class would be as a matter of law contrary to their cla

5. That the Appellees City of Miami and Longview, Inc., have sought and received judgment against Joel Jaffer personally, and have thus refused to act on applicable grounds. (Exhibit "B")

WHEREFORE, Joel Jaffer prays that he be designated the class representative of the B.A.Y. Committee and that the latter be allowed to [illegible] and process in forma pauperis.

IN THE ALTERNATIVE, Joel Jaffer demands that he be allowed to appear, and to proceed in forma pauperis with these claims, in that he was a party below and the litigation of his claim before this court will adequately test the claims of co-parties class. Comittee, as per Sosna v. Wickard, 321 U.S. 288.

Respectfully submitted,

Joel Jaffer, Pro Se
Chairman and Board of Directors,
Bayshore Alert : Yes Committee.
2479 SW 13 St.
Miami, Fla. 33145
Tel. (305) 643-1764

I HEREBY CERTIFY that a true copy of the foregoing Motion to Represent Class was this 25th day of February, 1980, mailed via U.S.Postal Service first class postage prepaid to the below-named adressees:

Hon. Jim Smith
Fla. Attorney Gen.
The Capitol
Tallahassee, Fla.32301

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Gus Efthimiou, Esq.
10th floor, DuPont Building
169 E. Flagler, St.
Miami, Fla. 33130

The instrument and certificate executed as true and correct this 25th day of Feb, 1980, BY: Joel Jaffer
Joel Jaffer

DISTRIBUTED
APR 18 1980

Supreme Court, U.S.
FILED
APR 18 1980
MICHAEL RODAK, JR., CLERK

in the

Supreme Court

of the

United States

ORIGINAL COPY

CASE NO. 79-6261

JOEL JAFFER,
individually,

Appellant,

vs.

CITY OF MIAMI, a municipal corporation in the State of Florida; and HOLYWELL CORPORATION, a corporation with offices in Washington, D.C.,

Appellees.

On Appeal from the Supreme Court of Florida

APPELLEE HOLYWELL CORPORATION's MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO AFFIRM

JOHN K. AURELL, ESQUIRE
1401 AmeriFirst Building
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Miami, Florida 33131
Telephone: (305) 358-5550

Of Counsel:

MAHONEY HADLOW & ADAMS
Miami, Florida

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in the

Supreme Court

of the

United States

CASE NO. 79-6261

JOEL JAFFER,
individually,

Appellant,

vs.

CITY OF MIAMI, a municipal corporation in the State of Florida; and HOLYWELL CORPORATION, a corporation with offices in Washington, D.C.,

Appellees.

On Appeal from the Supreme Court of Florida

APPELLEE HOLYWELL CORPORATION's MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO AFFIRM

INTRODUCTION

Holywell Corporation ("Holywell"), which is one of the appellees herein, moves this Court to dismiss this appeal or alternatively to affirm the order appealed from. The order appealed from rests on an adequate non-federal ground and the appeal does not present a substantial federal question.

On January 3, 1980, the Supreme Court of Florida dismissed eleven separate and unrelated cases in which the Appellant, Joel Jaffer,[1] was a party-appellant, because Jaffer had failed and refused to pay the required filing fees to that court in each case. Holywell was a party to only one of those cases,[2] and the present motion is directly solely to the part of the order of the Florida Supreme Court which dismissed that case.

STATEMENT OF THE FACTS

On May 24, 1979, the City Commission of the City of Miami, acting pursuant to the provisions of Section 380.06, *Fla. Stat.* (1979), entered a Development Order for a development of regional impact to be constructed on Holywell's property, which is located in the prime

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[1]The sequence of cases that culminated in this appeal were brought in the Florida courts in the name of "B.A.Y. Committee, Joel Jaffer, Chairman." The Appellant before this Court is Joel Jaffer, individually.

[2]The case was assigned Case No. 57,944 in the Supreme Court of Florida.

business area of Miami.[3] Jaffer was an unsuccessful objector at the City Commission hearing at which the Development Order was entered.

On or about May 24, 1979, B.A.Y. Committee, Joel Jaffer, Chairman, filed a paper entitled "Notice of Administrative Appeal" in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. That document purported to appeal the entry of the Development Order to the circuit court.

On June 21, 1979, the circuit court dismissed Jaffer's appeal on the grounds that it did not have jurisdiction to consider an appeal of the Development Order and that Jaffer had no standing to appeal the order in any event.[4] After Jaffer's motion for rehearing was denied, he appealed the circuit court's order to the district court of appeal of Florida, third district, but he did not pay the required filing fee to that court. Thus, on August 6, 1979, the clerk of the district court notified Jaffer that the appeal would be dismissed unless the filing fee was paid on or before August 20, 1979. Jaffer did not pay the fee, and on September 5, 1979, the district court, acting pursuant to Fla.R.App.P. 9.040(h), dismissed the appeal.

Jaffer next filed a notice, stating his intent to invoke the certiorari jurisdiction of the Supreme Court of Florida. Jaffer again did not pay the required filing fee. On October 22, 1979, the Clerk of the Supreme Court of Florida notified Jaffer that that court could not consider his case unless and until that court's filing fee

[3]The property is known as Ball Point and was the subject of prior litigation before this Court. *City of Miami v. St. Joe Paper Company*, 99 S.Ct. 2153 (1979).

[4]Appendix at 1-2.

was paid.[5] Jaffer failed and refused to pay the fee, and finally, on January 3, 1980, the Supreme Court of Florida entered an order dismissing Jaffer's petition for failure to pay filing fees.[6] This is the order to which the present appeal is addressed.

ARGUMENT

THE ORDER APPEALED FROM RESTS ON AN ADEQUATE NON-FEDERAL GROUND

It is impossible to glean a consistent legal theory from Jaffer's Statement of Jurisdiction, which is chiefly composed of a disjointed litany of legal platitudes and is devoid of principled analysis. However, in view of his reliance upon 28 U.S.C. §1257 (1970), Jaffer apparently is asserting that by entering the January 3 order the Supreme Court of Florida sustained the validity of

[5]On October 30, 1979, Holywell filed a motion to stay the proceedings until Jaffer paid the filing fee. On November 6, 1979, the Supreme Court of Florida granted the motion "for all purposes until 20 days after Petitioners have perfected their appeal by filing the requisite fee."

[6]The Florida Supreme Court dismissed the petition subject to reinstatement if the filing fee was received by January 11, 1980. The court did not receive the fee from Jaffer by that date, nor has it ever received it.

Section 57.081, *Fla. Stat.* (1979),[7] in the face of a contention by him that the statute violates the due process clause of the Fourteenth Amendment.[8]

However, at least as concerns Jaffer's appeal in this case, Jaffer has admitted that he has not heretofore

---

[7]The statute provides in pertinent part that:

(1) Insolvent and poverty-stricken persons having actionable claims or demands shall receive the services of the courts, sheriffs, and clerks of the county in which they reside without charge. No prepayment of costs to any judge, clerk or sheriff in the county is required in any action when the party has obtained a certification of insolvency from the clerk in each action, based on affidavits filed with him that the applicant is insolvent and unable to pay the charges otherwise payable by law to any of such officers. The affidavits shall be supported by a written certificate signed by a member of the bar of the county that he has made an investigation to ascertain the truth of applicant's affidavit and that he believes it to be true; that he has investigated the nature of plaintiff's claim and that in his opinion it is meritorious as a matter of law; and that he has not been paid or promised payment of any remuneration for his service and intends to act as attorney for applicant without compensation. On the failure or refusal of the clerk to issue a certificate of insolvency, applicant is entitled to a review of his application for the certificate by the court having jurisdiction of the cause of action.

[8]U.S. CONST. amend. XIV, §1.

charged that Florida's insolvency statute is unconstitutional.[9]

Although the January 3 order was not accompanied by an opinion, it clearly was based on Fla.R.App.P. 9.040(h),[10] and not on the insolvency statute. It was totally unnecessary for the court to pass on the validity of the insolvency statute to reach the result it did. The rule provides for sanctions for failure to pay filing fees and that was the court's express reason for the dismissal. Jaffer's apparent contention that the court somehow implicitly passed upon the validity of the insolvency statute is simply not correct.

In fact, the Florida insolvency statute does not even apply to appellate proceedings. *Hillman v. Federal National Mortgage Association*, 375 So.2d 336 (Fla. 4th D.C.A. 1979).

Fla.R.App.P. 9.040(h) implements an earlier decision by the Supreme Court of Florida[11] which

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[9]*See* Statement on Jurisdiction at 14, where Jaffer states that "only the case against Richard Brinker [a separate case to which Holywell is not a party] directly contests the insolvency statute . . . ."
Holywell, of course, expresses no opinion on the legal effect of the Florida court's order insofar as it disposed of the ten other cases which were consolidated with Holywell's case for purposes of the order and this appeal. *See* text accompanying note 2, *supra*.

[10]"Non-Jurisdictional Matters. Failure of a clerk or a party timely to file fees or additional copies of notices or petitions shall not be jurisdictional; provided that such failure may be the subject of appropriate sanction."

[11]*Williams v. State*, 324 So.2d 74 (Fla. 1975).

expressly authorized the sanction of dismissal of an appellate proceeding for failure to pay filing fees, provided that reasonable notice is given to the appellant.[12] Jaffer was, of course, given reasonable notice and an opportunity to cure the problem.[13]

Jaffer has never contended that Fla.R.App.P. 9.040(h) is repugnant to the constitution, treaties or laws of the United States. Therefore, the January 3 order rests on an adequate non-federal ground and is not reviewable by this Court.[14]

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

Even if Jaffer had properly and in a timely manner challenged the constitutional validity of Florida's insolvency statute, this appeal would not present a substantial federal question.

In *Ortwein v. Schwab*, 410 U.S. 656 (1973), this Court held that an Oregon statute which required payment of a filing fee for civil appeals did not violate the due process clause of the Fourteenth Amendment when applied to indigents seeking to appeal an adverse decision by a county agency. The Court stressed the fact

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[12]*See* Committee Notes to Fla.R.App.P. 9.040(h) (1977).

[13]As noted in the Statement of Facts, *supra* at 3, the Clerk of the Supreme Court of Florida notified Jaffer on October 22, 1979, that the court could not hear his case until he paid the filing fees. More than two months later, the court dismissed Jaffer's case.

[14]28 U.S.C. §1257 (1970).

that procedural due process requirements were satisfied because the appellants had had a hearing before the county agency.[15] The Court reiterated its longstanding rule that "due process does not require a State to provide an appellate system."[16] It follows *a fortiori* that a state is free to condition access to its appellate system upon fulfillment of certain reasonable requirements which serve legitimate state purposes, such as the payment of filing fees.

Jaffer's attendance and participation at the Miami City Commission hearing on the Development Order, like the hearing before the county agency afforded to the unsuccessful appellant in *Ortwein*, satisfied the requirement of procedural due process.[17]

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[15]*Id.* at 659-60.

[16]*Id.* at 660.

[17]Jaffer has never alleged that the hearing before the Miami City Commission was marred by any constitutional deficiencies. *Cf. Goldberg v. Kelly*, 397 U.S. 254 (1970).

Furthermore, this case does not involve the deprivation of a fundamental right. This Court has held that the constitutional significance of a debtor's interest in obtaining a discharge, or of an indigent's interest in contesting a reduction of welfare benefits, is not sufficient to support a due process attack on court filing fees. *United States v. Kras*, 409 U.S. 434 (1973); *Ortwein v. Schwab*, 410 U.S 656 (1973). Such interests, while not significant enough, are manifestly more important than Jaffer's purported individual interest in contesting the City of Miami's Development Order. Jaffer's comparison of his purported interest to an individual's interest in his or her own marriage relationship, which this Court vindicated by striking down Connecticut's filing fee requirement in divorce actions, is absurd. *Boddie v. Connecticut*, 401 U.S. 371 (1971).

Although it is not properly before this Court on this appeal, it is similarly evident that the question of the validity of Florida's insolvency statute, as applied to Jaffer, does not present a substantial federal question. An indigent is not entitled to proceed *in forma pauperis* as a matter of right; such a proceeding is a privilege conferred by statute.[18] The statute is presumptively constitutional.[19] The statute's requirement that an indigent furnish some certification as to his indigency and the probable merit of his claim is a rational one that serves legitimate state purposes. It furthers the state's interest in having its citizens fund the courts by conferring free access to the courts only to those citizens who would otherwise be totally precluded from using them.[20] It also prevents abuse of the judicial system by restricting the flood of frivolous litigation and appeals which would arise if there were no limitations on who could proceed *in forma pauperis*.

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[18]*See* Annot., 6 A.L.R. 1281, 1282 (1920).

[19]*State v. Rodriquez*, 365 So.2d 157 (Fla. 1978); *Belk-James, Inc. v. Nuzum*, 385 So.2d 174 (Fla. 1978); *State v. McDonald*, 357 U.S. 405 (Fla. 1978).

[20]*See* the well-reasoned opinion of the Washington Supreme Court in *Carter v. University of Washington*, 536 P.2d 618 (Wash. 1975).

CONCLUSION

Mr. Jaffer's appeal should be dismissed. In the alternative, it is respectfully submitted that this Court should affirm the order of the Supreme Court of Florida.

Respectfully submitted,

JOHN K. AURELL
1401 AmeriFirst Building
One Southeast Third Avenue
Miami, Florida 33131

Of Counsel:
MAHONEY HADLOW & ADAMS
Miami Florida

APPENDIX

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. 79-166-AP

B.A.Y. COMMITTEE, Joel Jaffer, Chairman,
Plaintiffs,

v.

CITY OF MIAMI, A municipal corporation in the State of Florida, HOLYWELL CORPORATION, a corporation with offices in Washington, D.C.
Defendants.

ORDER ON MOTION TO DISMISS OR STRIKE

This cause is before the Court upon "Motion to Dismiss or Strike Purported Administrative Appeal", filed by Holywell Corporation. A response has been filed by Joel Jaffer, in proper person, and as Chairman of B.A.Y. Committee.

A review of the motion and the response reveals that the appeal is from a resolution of the City of Miami Commission passed and adopted on May 24, 1979, authorizing issuance of a development order for the Ball Point Project. Holywell Corporation argues the appeal should be dismissed because Joel Jaffer and B.A.Y. Committee have no standing to appeal the order, and because the order is one which may not be appealed to

this Court. A close reading of the authorities cited by Holywell Corporation indicates they are correct on both counts. Section 380.07(2) F.S., provides that any Development Order of a local governmental body may be appealed to the Florida Land and Water Adjudicatory Commission by filing a Notice of Appeal with the Commission. Such an appeal may be taken only by ". . . the owner, the developer an appropriate regional planning agency by vote at a regularly scheduled meeting, or the state land planning agency . . . ." It is apparent Jaffer and B.A.Y. Committee are not any of the named parties having standing to file such an appeal, and the appeal was not filed with the Florida Land and Water Adjudicatory Commission, hence the appellants have failed to exhaust their administrative remedies. See General Electric Credit Corporation v. Metropolitan Dade County, 346 So.2d 1049 (D.C.A. 3d 1977); Sarasota County v. General Development Corporation, 325 So.2d 45 (D.C.A. 2d 1976); and Sarasota County v. Beker Phosphate Corporation, 322 So.2d 655 (D.C.A. 1st 1975).

The Notice of Administrative Appeal filed by B.A.Y. Committee, Joel Jaffer, Chairman, is therefore dismissed.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 21st day of June, 1979.

/s/
HERBERT STETTIN, Judge

cc: Mahoney, Hadlow and Adams
George F. Knox, Jr.
Joel Jaffer, B.A.Y. Chairman

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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

CASE NO. 79-6261

ORIGINAL COPY

JOEL JAFFER,)
Petitioner,)
vs.) MOTION TO DISMISS
RALPH G. ONGIE, etc.,)
Respondent.)
)

Respondents, CITY OF MIAMI and JAMES G. ROBERTSON, by and through their undersigned counsel, move this Court to dismiss the appeals filed in this cause, and for grounds therefor say:

1. The Petitioner has filed in the various courts, commencing in the Circuit Court, in the Eleventh Judicial Circuit, in and for Dade County, Florida, the Third District Court of Appeal of Florida, and the Supreme Court of the State of Florida, 21 cases. The causes of action in each of these cases have been filed in the name of Bayshore Alert Yes Committee, Joel Jaffer, Chairman, or abbreviations thereof. The effect of this type of filing is in essence to create a class action. As, according to the Articles of Association of the Bay Committee, there are listed 29 subscribers and their addresses, including Joel Jaffer. See Exhibit A. Joel Jaffer therefore is of counsel for these 29 members together with the so-called "class" that he allegedly represents, according to his pleadings.

2. The Florida Bar has furnished an Affidavit stating that Joel Jaffer is not a member thereof and therefore is not authorized to practice law in the State of Florida, nor in the Supreme Court of the United States. See Exhibit B. The appeals in this cause and the certiorari filed in this Court have been

in the name of Joel Jaffer, Chairman, Bay Committee, etc., et al.

3. The Clerk of the Supreme Court of the United States has re-designated both the appeal in this cause and the certiorari filed as Joel Jaffer, Petitioner. Therefore, his standing in this Court has been changed from that in which the cases were filed in all lower court proceedings.

4. This Court, in permitting Joel Jaffer to proceed as Chairman on behalf of the Bay Committee, will in effect authorize him to practice law, contrary to and in violation of (1) the Integrated Rule of the Florida Bar XVI, Unauthorized Practice of Law, and (2) the Florida Constitution Article V, Section 2(a) and (3), 454.23, Florida Statutes. See State v. Sperry, 140 So. 2d 587 (Fla. 1962), a copy is attached as Exhibit C. The Bay Committee is the real party in interest and Joel Jaffer is solely the attorney, which means that Joel Jaffer, Chairman, is in effect practicing law without a license not on behalf of himself, but on behalf of the Bay Committee, and is attempting to persuade the Court that this personum action is supported by the pleadings.

5. Joel Jaffer, in one of the cases presently before this Court, acting on behalf of the Bay Committee, has demanded $2,500.00 in exchange for his agreement to cease litigation in that particular matter, thus utilizing the Courts of the State of Florida and of the United States for pecuniary profit. See letter attached as Exhibit D.

6. The Lower Courts, in Case Numbers 57-786 and 57-787, were dismissed on October 1, 1979 by Order of the Supreme Court, a copy of the Orders are attached hereto as Exhibits E and F. Therefore, the Court lacks jurisdiction as

to these cases for failure to file within 90 days. United States Supreme Court Rules 10, 11 and 13.

7. The "Petitioner", JOEL JAFFER's manipulation of the Court system and his disdain for the Court is further reflected by a document he mailed to the City of Miami Law Department entitled "A Mathematical Approach to Frivolous Appeals". The parody of this document is that no matter how frivolous the appeal may be, the Courts cannot deem it so under his mathematical formula. See Exhibit G. In addition, the whim of the Petitioner is further reflected in the letterhead mailed to Assistant City Attorney G. Miriam Maer, in which he styles himself as "the grove gadfly", and a second letterhead in which he writes on the bottom thereof to Ms. Mikele Stander Carter, Assistant City Attorney, "A Pleading a day keeps the Sunshine Away". In both of the above letters there were pleadings involving litigation presently under consideration by this Court. See Exhibit H.

8. The Petitioner has filed a motion to proceed in forma pauperis. Predicated upon Paragraph 1 hereof, JOEL JAFFER, in all the proceedings in the Lower Courts, has designated the style of the case as "Bayshore Alert Yes Committee, Joel Jaffer Chairman". In his motion presently before the Court, he further recites in Paragraph 3, "motion to represent class are affirmed". It is apparent that JOEL JAFFER is not proceeding in the cases presently on appeal individually, but rather as the representative of a class. The record is devoid of any allegations or affidavits that the so-called class he represents, or the members of the so-called Bayshore Alert Yes Committee, are without funds to pay the cost of this appeal. The Courts have held in similar situations that costs would not be waived. S.O.U.P., Inc. v.

The Federal Trade Commission, 449 F.2d 1142, U.S.App. D.C. 1971. Copy is attached as Exhibit I. The Courts of the State of Florida have held that forma pauperis proceedings will not be permitted in an appeal unless authorized by Statute, that in the State of Florida there are no statutory provisions providing for forma pauperis waiver of fees in appellate proceedings. See Hillman v. Federal National Mortgage Association, 375 So. 2d 336 (4th DCA 1979). Copy is attached as Exhibit J. The Respondent submitted a motion in opposition to the Bay Committee's forma pauperis before the Supreme Court of the State of Florida prior to the Petitioner's appeal being dismissed.

9. The Court will note in Paragraph 1, supra, that there has been a total of 21 cases filed. Hearings were afforded the Petitioner in the Lower Circuit Courts. Therefore, he has not been denied, nor has the Bay Committee been denied, their day in Court. Will a non-lawyer be permitted to bring a class action and plead poverity without formal affidavits from the members of the association he allegedly represents? See S.O.U.P., Inc. v. Federal Trade Commission, supra. The Florida Courts have held that excess amount of litigation is contrary to public policy and should be enjoined. Shotkin v. Cohen, 163 So. 2d 330 (Fla. 3d DCA 1964). A copy is attached as Exhibit K. To have 21 cases presently pending before this Court certainly smacks of excessiveness.

10. The Petitioner in his Brief leads the Court to believe that he has a pecuniary interest or a direct property right to the property involved in the proceedings before either the City Commission or the Lower Court. This allegation

is erroneous as the Bay Committee has no interest other than as a member of the public at large. Therefore, they are not being deprived of any "property right".

11. The Petitioner has not raised a Federal question in any of the cases presently pending before this Court in the initial pleadings in the Circuit Courts from which these appeals have been taken.

Respectfully submitted,

JACK R. RICE, JR.
Attorney for DR. JAMES ROBERTSON
P. O. Box 350838
Miami, Florida 33135

GEORGE F. KNOX, JR., City Attorney
MIKELE S. CARTER, Asst. City Attorney
Attorneys for CITY OF MIAMI
174 East Flagler Street
Miami, Florida 33131

By _____
MIKELE S. CARTER, Asst. City Attorney

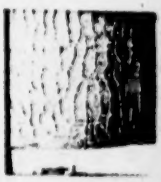

Exhibit A

ARTICLES of ASSOCIATION
of the
B.A.Y. COMMITTEE

We, the Undersigned, in order to afford for ourselves better representation, recognition and protection, do subscribe to these Articles of Association.

Article One

1. The name of this association is the Bayshore Alert : YES (B.A.Y.) Committee and its principle place of business will be at 3268 Mary St., Coconut Grove, Fl. 33133

2. The prevailing purpose of this association shall be to provide for its members and all citizens direct participation in the development, if any, of Miami's bayshore, and to preserve and protect the property values, natural and historic features, and character of the neighborhoods of its members.

3. The association will exist perpetually unless unanimously dissolved by its members pursuant to by-laws adopted in addition to these articles.

4. Amendments or by-laws to these articles may be adopted to these articles by a direct vote of 2/3 of the members, at a general meeting or by proxy.

5. The association will be voluntary in nature.

Article Two

1. The Board of Directors of the association will consist of a

Chairman, a Legal Representative and a Business Representative. The latter two will perform as Secretary and Treasurer, respectively, within the association.

2. The name and post office address of the first board of directors is as follows: Joel Jaffer 3268 Mary St., Coconut Grove, Fl. 33133 This board shall perform the duties of the board and represent the association prior to, and shall arrange for and preside over the first general meeting of the association.

3. The association shall, at its first and subsequent general meetings, delegate authority and responsibility to the board or any person or group of persons within the association as it sees fit, and shall provide for subsequent meetings.

4. The association shall make decisions by consensus.

Article Three

1. The Legal Representative shall de facto represent and be a resident agent for the association as a legal entity, when applicable by statute or practice; or shall act as a class representative for the individual members of the association.

2. A group of members of the association may arrange for the support of the entire association in so far as their concerns and interests are presented to the board of directors in a written subscription. If the legal representative is not able to represent the group, the board may arrange for an assistant legal representative within the group, or retain outside counsel for the group.

3. A member of the association acting within his rights or duties of and for the association shall not be held personally liable for his actions in a court of equity.

IN SUBSCRIPTION TO these articles, we set upon these articles our hands and seals:

Jack S Jaffen

Alan M. Hathaway

Joel Stillman
2915 Tigertail Ave.
Coconut Grove, Fl. 33133

John Lutzow
2639 Tigertail - Coconut Grove FL.

Jon Lloyd
1815 Dechee Dr-Coconut Grove

J. F. Miller
2310 Tigertail Ct.,

James L. Gray
2517 Andra Ave., 33123.

Mrs R.J. Smith
3201 Kirk St.

David DuBois
2340 Tigertail

Carl C Pa...
2343 Tigertail ...

3268 Mary St. Coconut Grove, FL 33133

3268 Mary St, Miami, 33...

Margaret & Dr. Bois
2348 Tigertail ...

Jean W. Skaggs
3221 Calusa

Florence B Ellig
3211 Calusa St

Allan Hubler
ALLAN HUBLER
2421 TIGERTAIL AVE.

Jean M. Kaus
2451 TIGERTAIL AVE.

DJ. TRACHTENBERG
2501 Tigertail

Richard T. Sch...
3401 So Bayshore Dr.

IN SUBSCRIPTION TO these articles, we set upon these articles our hands and seals:

3041 Oak Ave, Coconut Grove

3021 Oak Ave

Carol Penney
3372 Virginia St.

3368 Mary St.

3268 MARY ST.

3268 Mary St. Apt. 2

3268 Mary St. Apt. 2

88 Mary Street #1

2901 S. Bayshore Dr #9G

2901 S. Bayshore Dr.

2901 S. Bayshore Dr.

3134 Virginia St.

State of Florida)
) ss.
County of Dade)

BE IT REMEMBERED that on this day personally appeared before me, the undersigned notary public in and for this State of Florida at large, duly authorized to take oaths and administer acknowledgements,

JOEL S. JAFFER,

witness and party to the foregoing Articles of Association, and, after positively proving his identification as such, has sworn and deposed that the subscriptions attached thereto were made in his presence, and are the authentic and genuine signatures and addresses of those persons whom they purport to be, and has acknowledged the same Articles to be the act and deed of such signers, that the facts therein stated are truly set forth, and attests to such declaration with his seal.

(Seal) Joel S. Jaffer
JOEL S. JAFFER

WITNESS my hand and official seal at Miami, said County and State, this 7 day of May, A.D., 1979.

Joanne M. Brown
NOTARY PUBLIC, State of Florida at Large

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 14 1980
BONDED THRU GENERAL INS. UNDERWRITERS

Exhibit B

AFFIDAVIT

STATE OF FLORIDA)

COUNTY OF LEON)

Before me, this day, personally appeared VIRGINIA L. HARDISON, who being duly sworn deposes and says:

I, VIRGINIA L. HARDISON, am director of the Membership Records Department of The Florida Bar in Tallahassee, Florida, with responsibility to handle the membership records in this department. The records of The Florida Bar reflect that Joel Jaffer is not a member of this Bar.

Virginia L. Hardison
VIRGINIA L. HARDISON

SWORN TO AND SUBSCRIBED BEFORE ME
this 14th day of November, 1979.

Charlotte E. Bragdon
Notary Public
My Commission expires: _____

STATE OF FLORIDA
COUNTY OF LEON

I, the undersigned authority, hereby certify that the foregoing is a true and correct copy of the instrument presented to me by Virginia L. Hardison as the original of such instrument.

WITNESS my hand and official seal, this 15th day of November, A.D. 1979.

Charlotte E. Bragdon
Notary Public
State of Florida at Large

My commission expires:

EXHIBIT B

Supreme Court of Florida

WEDNESDAY, OCTOBER 31, 1979

JOEL JAFFER,	**	
Appellant,	**	CASE NO. 57,786
vs.	**	
		DCA CASE NO. 79-859
RALPH G. ONGIE, ETC.,	**	
Appellee.	**	

On consideration of the motion to reinstate timeliness filed by appellant,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

C
cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Cler
with copy for Circuit Judg

Mr. Joel Jaffer
Hon. Jim Smith

EXHIBIT E

Supreme Court of Florida

WEDNESDAY, OCTOBER 31, 1979

JOEL JAFFER,	**	
Petitioner,	**	CASE NO. 57,787
vs.	**	
RALPH G. ONGIE, ETC.,	**	DCA Case No. 79-859
Respondent.	**	

On consideration of the motion to reinstate timeliness filed by petitioner,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: [signature]
Deputy Clerk

C
cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
with copy for Circuit Judge

Mr. Joel Jaffer
Hon. Jim Smith

EXHIBIT F

PAGE 5

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. 79-6261

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MAY 8

JOEL JAFFER,
Etc.,

Petitioner,

-vs-

CITY OF MIAMI,
Etc.,Et al.,

Respondents.
_____/

ANSWER TO MOTION TO DISMISS

ORIGINAL COPY

Pro Se Petitioner Answers a Motion to Dismiss served upon him by mail:

1. The said Motion was not accompanied by a Notice or Form of Appearance when served upon the said Petitioner.

2. Joel Jaffer, Pro Se, has been a party appellant to these proceedings in the Florida Supreme Court.

3. The Bayshore Alert;Yes! Committee was inttially a party to some/ proceedings. At some stage in the state courts, the said Committee was denied leave to intervene and/or be maintained as a class. In the State of Florida, such parties may appeal such rulings adverse to their intervention and/or class maintainence. Bancroft v. Allen, 1937, 128 Fla. 14, 174 So. 749.

4. Petitions for Writ of Certiorari to a State Supreme Court involve only the actions of the said State Supreme Court. Cohens v. State of Virginia, 6 Wheat. 264.

5. Joel Jaffer has properly filed a Motion to Proceed In Forma Pauperis, as amended, and is the appellant/Petitioner in this court. His motion to rppresent co-appellants/in this cause below/ [redacted] overrides any imaginary State concern of the Appellees. Sperry v. Florida Bar, 373 U.S. 379.

6. This appeal/Petition consists of six cases, some of which were the product of properly consolidated reviews below.

7. Florida Supreme Court Case Numbers 57,786 and 57,787 are the subject of Petition for Writ of Cert. Case No. 79-6262 in this court.

8. The Appellees City of Miami and James G. Robertson apparently request notice to be given to all members of the purported class, to determine their financial/interest in the issues here raised. The Petitioner would have no objection to this request.

9. The actual property rights of the Petitioner are not at issue here. What is at issue is whether actions to determine those rights are fundamental or not, enough to override certain state concerns.

10. Paragraphs 1,2,3,4,5,6,7,9,10 of the Motion to Dismiss filed by Respondents City of Miami and James g. Robertson are thus irrelevant, immaterial and scandalous matter and should be stricken.

11. The Petitioner adopts argument contained in his "Reply Brief" on Jurisdiction filed in response to an Answer Brief-Motion to Dismiss &c. of Respondent Holywell, Inc. with regards to the Federal question pending before this court.

12. A lack of merit must first be shown before abuse of process may be alleged. Respondents show no such want of merit.in this Petition.

WHEREFORE, Petitioner prays that the Motion to Dismiss filed herein by Attorneys for the City of Miami and James G. Robertson be stricken and/or denied, and the Court take jurisdiction of this cause.

I HEREBY CERTIFY that a true copy hereof was this 22 day of April,1980 served by U.S. Mial, first class postage prepaid, to Miele Carter, Asst. City Atty.,174 E. Flagler St., Jack Rice,Esq., P.O.BOx 350838, Miami, Fla., and Hon. Jim Smith, Fla. Atty. General, Tallahassee,Fla.

I FURTHER CERTIFY that all persons required to be served have been served.

Submitted,

Joel Jaffer, Pro Se
Mailing Address:
2479 S.W. 13 St.
Miami, Fla. 33145

MAY 8 PAGE 5

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. 79-6261

RECEIVED
APR 25 1980
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SUPREME COURT, U.S.

JOEL JAFFER, Etc., Et al.,

Appellant,

-vs-

CITY OF MIAMI, Etc.,
HOLYWELL CORP., Etc., EtAl.,

Appelllees.

APPELLANT'S BRIEF OPPOSING MOTION
TO DISMISS, ORIN THE ALTERNATIVE,
MOTION TO AFFIRM: [RULE 16 (4)]

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

Submitted,

Joel Jaffer, Pro Se
Mailing Address:
2479 S.W. 13 St.
Miami, Fla 33145

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RESTATEMENT OF THE FACTS.

On June 21, 1979, the circuit court dismissed Jaffer's appeal because he had not exhausted all of his administeative remedies, which he had no standing to file.

In a motion for rehearing of this apparently contradictory ruling, on June 29, 1979 Jaffer brought to the attention of th e court Article I, Section 21 of the Florida Constitution, which provides that the courts of the state shall be open for the redress of any injury "without sale, denial or delay". He also asked to be directed to the proper venue for his action, pursuant to Artciel V, Fla.Const., if he had been adjudged not to be a proper party in the said circuit court.

After this Motion for Rehearing was denied, on July 24th, Jaffer moved to Waive Prepayment of Costs on Appeal. In doing so, he plead,

> "Plaintiffs filed this appeal originally as insolvents. They likewise ask for the Court to Waive Prepayment of Costs On Appeal. "

This Motion was never ruled upon by the Circuit Cour t, which was the sbuject of much pleading in the District Court of Appeals, as will hereinafter be described.

In a concurrent Motion for Stay Pending Review, Jaffer stated:

> " Money has no bearing in a court of law. "

In a reply to the Appellees' responses to this Motion, July 30, :

> " this appeal * * * touched on * * * two of the most fundamental legal principles in the State of Florida, those being separation of powers and the right to appeal. * * *
>
> To hold that all persons dismissed from a love r cour t could not seek a stay of that order would be to deny persons organic rights to appeal. Kilbee v. Myrick,(1868) 12 Fla.416. * * * (Appellants) are merely in the position of assuring that the said development complies with regulations imposed upon it by the Legislature of the State of Florida. * * *

In defense of fundamental rights to t he said appeal, Jaffer enumerated "enjoying ~~[illegible]~~ and defending life and liberty, and pursuing happiness guaranteed him by Article I of the Florida Constitution," and

> "In Lee v. DelMar, 66 So.2d 252, the court said, ' There may be certain t rades, professions or occupations so cloth ed with the public interest that they may be regulated by the legislature in the public interest * * * The legislatute mush (sic) provide the yardstick of such regulation.'
> What is simply before this court * * * is adjudication of that yardstick and regulation. That the Fla. Land and Water Adjudicatory Commission is the sole adjudicator of that would be to place unlawful judicial powers upon a regulatory board. Watson v. caldwell, 156 Fla. 618, 23 So.2d 855. * * *
> Court fees have never been intended or held to determine the rights of the parties. The court has not held this appeal frivolous. "

The motion for stay was also never ruled upon by the circuit court.

The appeal then proceeded to the District Court of Appeal, third District of Florida. The Appellee Holywell again moved to dismiss that appeal, for what Jaffer claimed wase the precise issued involved in the circuit court's dismissal. Comparable and extensive argument ensued in the district court, which finally si mply dismissed for want of fees.

Appeal was then taken, by way of certiorari, to the Florida Supreme Cour t. Undaunted, Appellee Holywell moved to dismiss that appeal for the same reasons. Pleadings and argument before the Florida Supreme Cour t have been more adequately described in Jaffer's Petition- Jurisdictional statement, than in Appellee Holywell's Motion.

ARGUMENT

THE PETITION PRESENTS A SUBSTANTIAL FEDERAL QUESTION.

The Appellee Holywell, in the first portion of their argument, have proceeded apparently ignorant of the fact that this court has

treated Jaffer's, et al.'s notice of appeal as improvidently taken, and instead as a Petition for Writ of Certiorari. 28 U.S.C. 2101 et.seq. This is evident by the argument headings and, indeed, the very title of the motion taken from Rule 16, Rules of the Supreme Cour t of the United States, which governs motions to dismiss appeals.

However, this Court has styled Jaffer as the Petitioner. Nonetheless, we will consider these contentions of the "Appellee".

That Jaffer contested the validity of Chapter 57.081 and Fla.R.App.P. 9.430 as being, as applied to him and on their face, repugnant to t he Constitution and laws of the United States is plain and clear from the record, Jurisdictional Statement.

The Jaffer v. Brinker case was, admittedly, the only case which directly contested that validity in the circuit co urt. But Petition for Writ of Certiorari to a State Supreme Court is a review of the actions only of that (Jaffer) court, and will ordinarily not delve into the issues of first instance. Gohens v. State of Virginia, 6 Wheat. 274.

In this case, Jaffer raised constitutional issues in the circuit court in his Motion to Waive Costs by stating that, under the circumstances, "Money has no bearing in a court of law," &c. Such a statement undoubetly alleges an invidious discrimination and susepcet legal classificati on in the premises. Griswold v. Connecticut, 381 U.S. 479.

By the Circuit Court's not ruling upon this motion, and th e District Appeals court finally dismissing the appeal because the fee had not been paid is plain evidence that the District court passed upon the validity of the indigency provisions of the Florid a Court system.

But then, all of this was argued to the Florida Supreme Court, as the entire basis for its jurisdiction. Their dismissal of this issue is what is being reviewed by this court.

Jaffer plead that/ and he did indeed originally file this action in the circuit court under the insolvency statute. The cause was not dismissed because of a failure to comply fully with t hat statute. Thus, the Court rules here questioned are merely extensions of and modicems of a substantive, statutory and constitutional right, and which the Petitioner claims procedural encroachments broadly invade to the extent t hat the jurisdiction of this court is invoked. Such rules cannot enlarge or restrict Petitioner's fundamental rights. (Juris. Statement)

Which brings us to the question of the substance of the question on review to this court.

It is a reasonably well-settled fact that an indigent's right to appeal without costs, or to maintain an action wi thout costs, depends upon the type of action he wished to maintain. Here, Jaffer sought a review of a development order, accorded by Ch. 380, F.S.A. He did not have have standing to obtain an administrative hearing, so he appealed to the judicial branch of government instead.

Thus, the case is governed more by Boddie than by Kras. Petitioner has a "fundamental interest that is gained or lost depending on availability" of relief, which the ver y action sought to establish. Kras, supra. Furhher, there wa s no other remedy available to the Petitioner, by th e circuit court's very order.

The fundamental right on which Petitioner relies is more property-oriented than onan "area of economic or social wèèfare", Juris. Btatement. The Development Statute confers a right to appeal an adverse decision.

Such a right, once granted, cannot be diluted by the removal of judical review. Meltzer v. LeCraw, 402 U.S. 954. Although not firmly delineated by this court, the Florida Land and Water Adjudicatory Commission's usurpation of review in the courts would appear to be an agency action to revoke a right previously granted. Stock Yard Cases, 298 U.S. 38 at 84. The Miami City Commission does not thus qualify as a n agency, nor does t he hearing there comport with prodedural due process requirement of Goldberg v. Kelly, because the very appeal raises questions of law and presents a controversy over the procedure there. 397 U.S. 254.

But, as stated in the Cohens case, su pra, the discussion of these issues for the jurisdiction of this court is absurd under the authority of Boddie, not, as Appellees contend, because a marraige relationship is more fundamental than zoning rights, but because such a dismussion wou ld be the same as arguing the finer points of child custody and Gladys Boddie's goings on with her husband in order to determine jurisdiction.

The important issue is that an appeal of a dismissal based on lack pf court fees was itself dismissed because of a lack of court fees. Also, the appeals were dismissed for the same reasons as the original cause was dismissed. Going to the me rits of a dismissal in order to dismiss the appeal th ereof is a substantial Federal due process question, and will not be tolerated. Lanier v. Nash, 122 U.S. 630, Illinois Central Ry.Co. v. Adams, 180 U.S. 28.

In this sense, the Florida Supreme Court never reached the rationality or invidious discrimination imposed by the statute, because it dismissed the question. Thus, the right that has been denied the Petitioner is that to test a statute in a State Supreme Court to conform same to the Unit ed

States Constitution. The United Sattes Constitution is Law of the State. Florida v. Mellon, 273 U.S.12 . Interpretations of that Law by the United Sattes Supreme Court must be co nsidered as the Law of a State. Cooper v. Aaron, 358 U.S. 1. For a State Court to dismiss such a question is a denial of its authority in t he premises, which is contrary to the U.S. Constitution. Cohens v. Virginia, su pra, as well as the Florida Constitution itself.

There certainly can be no rationaljustification for this.* The interests which the State has overridden are governmenaal in character. Maryland v. Wirtz, 392 U.S. 183. They needlessly sweep broadly over and invade fundamental rights of Petitione r to contest a statute in its application and avail himself of the jurisdiction of the Highest court of a state. NAACP v. Alabama, 377 U$.S.288.

*The only case Lead that has been diminished is this one case!

The action of the State Supreme Court here is in itself an upholding of the statutes in question, without being a decision or otherwise the product of due process of law. Paupers do not necessarily foment frivolous litigation any more than black persons throw away their votes. To, in effect connect the two denied Petitione r of the equal protection of thw Law. Draper v. Washington, __ U.S. __ .

The Appellee's Motion itself goes to the merits of this cause in order to have it dismissed. Their argument seeks to justify the actions of the Florida Supreme Court on Federal grounds. As such, the Motion should be denied and the Court should take jurisdiction of th is cause.

Submitted.

Joel Jaffer, Pro Se Mailing Address:
2479 S.W. 13 St., Miami, Fla.

I HEREBY CERTIFY that a true copy of the foregoing Brief was mailed this 21 day of April,1980 to all parties required to be served. /s/ Joel Jaffer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief Opposigg Motion to Dismiss, or,alternately, Motion to Affirm, of the Appellants was served by mail, first class postage prepaid, this 21st day of April, 1980 to John Q. Aurell, 1401 Amerifirst Building, 1 S.E.3#rd Ave., and Mikele Carter, Esq.,174 E. Flagler St., both of Miami, Florida, 33131.

I FURTHER CERTIFY that no notice of appearnace was served upon the Appellants with service of the Appellee Holywell's Motion to Dismiss, &c.

MOTION FOR ORAL ARGUMENT

The Appellants hereby respectfully request oral argument before the Court for all pertinent and applicable deliberations in this cause.

Submitted,

Joel Jaffer, Pro Se
Mailing Address:
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